

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Safeguards to GTE Corporation )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY  
CC Docket No. 90-263

CC Docket No. 92-256

**COMMENTS OF  
THE INFORMATION INDUSTRY ASSOCIATION**

The Information Industry Association ("IIA") hereby submits its comments in response to the Commission's Public Notice seeking additional comment on necessary changes to the agency's rules governing Customer Proprietary Network Information ("CPNI"). [1] IIA has consistently argued that the existing CPNI rules applicable to residential and small business users undermine competitive equity because of the substantial marketing and other advantages they confer upon local exchange carriers and their affiliates when participating in non-regulated markets. Accordingly, IIA urges the Commission to remove the existing double standard for access to the CPNI of these users and ensure that all competitors in the enhanced services marketplace have full, fair, and equal access to such information, consistent with legitimate privacy interests.

IIA is a trade association representing more than 500 entities of all sizes providing enhanced services, telecommunications and associated equipment, and print media and electronic publishing services, as well as some of the largest providers of common carrier communications services. IIA's members are in the forefront of the development and implementation of new information products and technologies. As such, IIA's members frequently find themselves in competition with local exchange companies who have access both to their CPNI and to that of their customers.

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[1] FCC 94-63 (March 10, 1994).

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IIA generally supports the maximum practical availability of information such as CPNI because of its substantial value for information product development and for the provision of better service to the public. IIA nonetheless supports restrictions on dissemination of personal information to the extent necessary to preserve legitimate privacy interests.

IIA suspects that the dissemination of at least some CPNI of individuals would implicate an individual's reasonable expectation of privacy, and should be subject to some restrictions. From a privacy standpoint, however, all CPNI is not created equal, and in addressing privacy concerns the Commission may do well to consider an approach consistent with previous legislation that applies in somewhat analogous situations. For example, under the Cable Communications Policy Act of 1984 (47 U.S.C. 551), subscribers of cable television services are entitled to notice of anticipated uses of information collected by cable system operators concerning their use of cable television services. While disclosure of some of this information requires the "prior written or electronic consent" of the subscriber, the operator may disclose other categories of information, such as the names and addresses of cable subscribers, unless the customer exercises a negative option to prevent such disclosures. Congress employed a similar "opt-out" mechanism to protect the privacy interests of video renters in the Video Privacy Protection Act of 1988 (18 U.S.C. 2710).

IIA believes that the starting point for addressing the privacy issue should be the same in the case of CPNI as in other, similar areas. The customer should be well informed about anticipated uses of personally identifiable information; the customer should have the opportunity to make a decision about uses that are unrelated to those needed to provide the basic telephone service to which he/she has subscribed; and, subject to an appropriate mechanism, the flow of other information should be as unrestricted as possible, in order to maximize the benefits of access to and use of this information.

The application of this model to the current telecommunications environment is fraught with difficulties, however. As the Commission acknowledged in the Public Notice, its concerns regarding the impact of the existing CPNI rules are broader than the issue of protecting personal privacy. The unique nature of CPNI — detailed information about local exchange subscribers' use of their telephones in their personal lives and business operations collected by a monopoly provider of an essential service — creates problems that deserve special consideration from the standpoint of competitive equity. The competitive market for enhanced and information services depends on equal access to this valuable resource.

The competitive threats arising from the existing CPNI rules take two forms. First, the CPNI of small businesses, those with 20 or fewer lines, is not presumptively protected. This sector of the market deserves special attention, for it is precisely these entrepreneurial firms that in large part continue to provide the innovative ideas that spur growth and diversity in the U.S. information marketplace. If through inadvertence or otherwise, a small information provider fails to take affirmative steps to require that its CPNI be restricted, substantial knowledge about its operations will be available to the local telephone company and its affiliates. To the extent that the carrier's affiliates provide services competing with the entrepreneurial information provider, that affiliate, and by extension the monopoly carrier, obtains an enormous — and unfair — market advantage.

For example, information about traffic patterns on a business' telecommunications services could alert the exchange carrier to areas of high demand to which it can market its competing service. Similarly, orders for additional communications links by an information provider would give the carrier advance knowledge of the unaffiliated business' expansion plans, inviting preemption by the carrier and its affiliate in order to gain market advantage.

Threats to competition in such a scenario justify greater restrictions on access to this information than would otherwise be required on privacy grounds alone. Indeed, the principal rationale for the current double standard — that small businesses want to enjoy the benefits of "one stop shopping" — is specious so long as businesses can choose to release their CPNI to the exchange carrier should that be desired. Thus, small businesses merit the same protection of their CPNI that larger businesses receive.

Second, the current rules place the CPNI of single line residential customers at even greater risk because there is no requirement that those customers even be advised of their rights to restrict access. In the absence of such notice, they have no opportunity to control disclosure. In this respect, the rules run directly counter to fundamental concepts of individual privacy and fair information practices.

Perhaps the most pernicious aspect of the rules is that this CPNI, which can be uniquely valuable in the marketing of enhanced or information services to the general public, is as a practical matter made available only to the local telephone company. While others may theoretically make use of CPNI with an individual's affirmative written consent, the principal value of that information in identifying new marketing opportunities is lost by the time an information service provider knows enough to solicit such a consent. Unaffiliated competitors of the local exchange company must spend millions of dollars in an effort to develop comparable information. This disparity confers an enormous competitive advantage on the local telephone company's information service operations.

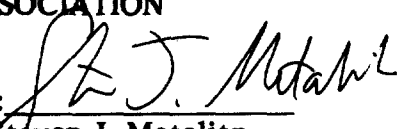
In this regard, the Commission has also requested special attention to restrictions on the use of CPNI in an era of alliances, acquisitions and mergers between local carriers and non-telephone company partners. An information provider that partners with a local exchange carrier and that, solely because of that partnership, gains access to the carrier's CPNI, will enjoy a tremendous market advantage in comparison to non-affiliated information providers that are denied access to this valuable marketing resource on equal terms and conditions. So long as the carrier collects CPNI by virtue of its government-granted monopoly status, it must not be permitted to transfer that advantage to its partners or joint venturers and thus frustrate the goal of achieving competitive equity with regard to access to CPNI. IIA's position on this issue is informed by its years of experience in working with government agencies to ensure, insofar as possible, that no private sector player derive an inappropriate competitive advantage from its access to information generated or collected by that agency.

The FCC's reasons for allowing the disparity in availability of CPNI must be reviewed in the context of present-day market realities. It simply cannot be the case that this information is so valuable to the mass market for information services that exchange carriers must be given access to it, but so insignificant that it will not create a major competitive dislocation if it is not provided to other competitors on equal terms. It follows that the existing double standard for access to CPNI in the FCC's rules should be removed and all competitors should be given full, fair, and equal access to this information consistent with legitimate privacy concerns.

The advent of effective competition in the local exchange marketplace would largely remove the competitive concerns underlying IIA's position. Under those circumstances, the full benefits to consumers of less restricted access to CPNI could be realized, and the broad applicability of the "opt-out" model to individual CPNI should become clearer. In the meantime, these questions should be addressed in a way that optimally resolves both strands of the CPNI debate — both a competitive level playing field, and a proper balance between privacy and the benefits of information flow.

Respectfully submitted,

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